IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 17 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

NUTAN MILLS LTD.

Appearance:

MR AKIL KURESHI with M/s. MANISH R BHATT & Co.
for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 25/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this Reference, at the instance of the Revenue, the following questions are referred for our opinion in respect of Assessment Years 1981-82 to 1983-84 :-

(1) Whether, on facts and in the circumstances of the case, the amount paid towards medical benefits, house rent allowance and premium for personal accident policy of Managing Directors could be included for the purpose of disallowance under section 40(c) of the Income-tax Act, 1961 ?

(2) Whether, the Appellate Tribunal is right in law in confirming the deletion of cash payment of house rent allowance to the employees, while considering disallowance under section 40A(5) of the Income-tax Act, 1961 ?

(3) Whether, in law and on facts, the assessee is entitled to extra shift allowance on exhaust fans ?

(5) Whether, the assessee is entitled to deduction of Rs. 22,200/- pertaining to the assessment year 1981-82 in respect of expenditure in connection with the issue of bonus shares ?

2. Though served, none appears for the respondent. We have heard Mr. Akil Kureshi, learned counsel for the Revenue.

3. The learned counsel for the Revenue states that as far as the question of reimbursement of medical expenses is concerned, the issue is concluded against the assessee as per the decision of this Court in CIT v. AMBICA MILLS LTD. (1999) 236 ITR 921. As far as the question of premium for personal accident policy of Managing Directors is concerned, the issue is concluded by the aforesaid decision in favour of the assessee and against the Revenue. As far as issue of house rent allowance is concerned, the issue is covered by the decision dated 5.2.1997 rendered in Income Tax Reference No. 27 of 1984 and the said decision is in favour of the Revenue and against the assessee. In view of the above settled legal position, we answer Question no.1 in favour

of the Revenue and against the assessee on the issues of reimbursement of medical benefits and cash payment of house rent allowance paid by the assessee to its Managing Directors. Accordingly, the said items will have to be included for the purpose of disallowance under section 40(c) of the Income-tax Act, 1961. On the other hand, the amount of premium for personal accident policy of Managing Directors is not to be included for the purpose of disallowance under section 40(c) of the Act.

4. As far as Question no.2 is concerned, the same is also concluded against the assessee by the decision dated 5.2.1997 in Income Tax Reference No.27 of 1984. Accordingly, we hold that the Tribunal was not right in confirming the deletion of cash payment of house rent allowance to the employees while considering disallowance under section 40A(5) of the Act. We accordingly answer the question in the negative i.e. in favour of the Revenue and against the assessee.

5. Coming to Question no.3 regarding extra shift allowance on exhaust fans, the said controversy is also concluded by the aforesaid decision dated 5.2.1997 in Income Tax Reference No. 27 of 1984 which is in favour of the Revenue and against the assessee. We accordingly answer Question no.3 in the negative i.e. in favour of the Revenue and against the assessee.

6. The last question referred by the Tribunal for our opinion, which is set out in Para-5 of the statement of case, pertains to expenditure in connection with bonus shares. The said controversy is already decided by this Court in (1) Gujarat Steel Tubes Ltd. v. CIT (1994) 210 ITR 358, (2) CIT v. Ajit Mills Ltd. (1994) 210, 658 and (3) CIT v. Ambica Mills Ltd. (1999) 236 ITR 921. Therefore, we accordingly answer Question no.5 in the negative i.e. in favour of the Revenue and against the assessee.

7. The Reference accordingly stands disposed of with no order as to costs.

(J.M.Panchal,J.)

(M.S.Shah,J.)

(patel)